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## History of the Courts of Virginia from 1607 up to the Present Time

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A THESIS

presented at the  
COLLEGE OF WILLIAM and MARY  
as a Partial Requirement for the  
Degree of Master of Arts

SUBJECT

History of the Courts of  
Virginia from 1607 up to the  
Present Time.

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Thomas W Gayle

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## Introduction

In order to understand the development of the Courts of Virginia, it will be necessary to give some preliminary steps in the organization of the judiciary in Virginia from 1607 - 1619. As we know the settlement in Jamestown in 1607 brought with it some of the institutions that existed in England at that time. Of course changes had to be made before it could be adopted to the new colony.

The Constitutional history of Virginia begins on April 10 1606 when King James I granted to the Virginia Company letters-patent for the establishment of two colonies in America'. By this charter, the local government of the southern colony was to be entrusted to a resident council composed of thirteen members". In accordance with the instructions given by the King to the Company, the General Council in England appointed seven men to be of the Council of Virginia. Their names were put in a sealed box which was not opened until April 26 1607, after the arrival at Cape Henry."

The Council as described was the principal judicial tribunal of the colony for it governed the colony according to the laws that existed in England at that time, however, it could not pass ordinances which affected life or limb. But these two restrictions were the only limitations that were placed upon it. Not only was this tribunal judicial but it was also legislative and executive, for the whole governmental functions were vested in it. In making decisions the majority rule prevailed, and in event there was a tie, the president had a right to cast two votes. Appointment of the officers and election of the president was also vested in this council. Whenever any person of the colony did an act to "rob or spoil" by sea or land, or do any act of unjust and unlawful hostility" to a citizen of a friendly state the Crown had the right to issue its own punishment.

However, the Council had authority to try all other offenses committed in the colony, and in cases where proper repentance could not be brought by the

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'Chitwood's "Justice in Colonial Virginia  
"Steth's "History of Virginia. Appendix 31  
#Neill's "Virginia Company. pp 5-6.

colony, the offender was sent to England for trial. The King provided that such offences as "tumults, rebellions, conspiracies, mutiny, and seditions, in those parts which may be dangerous to the states there together with murder manslaughter, incest, rapes and adulteries" were made punishable by death, and except for manslaughter, the benefit of clergy was not be allowed for any of them.' Whenever a person was accused of a crime he was to be given a trial by a jury of twelve, unless he confessed his crime or failed to answer proper questions in order to establish his guilt in either event the judgment was passed by the president of the Council. When minor crimes were committed or breaches of its ordinances, the Council by majority vote had power to pass the judgment in such cases. All proceedings at Court were conducted orally, but written words were kept of the cases decided by the Court.

During Ratcliff's presidency justice deteriorated greatly, decisions were no longer characterized by fairness. Personal animosities had arisen, and the councillors were prone to give unjust decisions to those who had incurred their dislike. In contrast to the reign of Ratcliff was the reign of Smith, justice seemed to take its just form and resume its proper status. Offenders were given equal share in justice, they were punished but not underservedly.

In 1609 a second Charter was granted to the colony which brought about an important change in the government. Instead of having a Council as before there was a governor at the head of the colony. For this responsible position Lord De La Worr, but did not come to Virginia until the following year. However, Sir Thomas Gates had been sent over to fulfill this position until the former governor arrived. He was shipwrecked off the coast of Bermuda and detained there for nine months, and consequently did not arrive at the Colony until the spring of 1610, but he then took the office of Lieutenant governor." The rules that governed judicial procedure prior to Gate's arrival were only those which came from the King, but when Gate's took office, he instituted a system of justice by which judicial decisions were rendered in accordance with law that was made to suit the exigencies that arose in the colony. In order to keep the rules and

ordinances before the public Gates took the initiative to write them out and posted them in the church at Jamestown. He then proclaimed the first legal code ever put into practice in English-speaking America.'

When Lord De La Worr arrived in Virginia to take office of Governor, he selected six men who were to act as his advisors. He made no change in the code which had been published by Gates. Sir Thomas Gale made laws as expected in the Code of Holland. The new code was approved by the Treasurer of the Colony, Sir Thomas Smith and had them printed for use of the Colony." These bodies of rules and ordinances remained in vogue from 1611 until 1619 at which time they were superceded by "Articles, Laws and Orders, Divine, Politique Martial" which were more severe than the preceding statute.

During this period the colony was under martial law, the Captains had power to punish soldiers in their companies for certain misdeed. The officers who were subordinate to Captains and lieutenants reported disorder and in event their superiors were absent they acted in their capacity. The prevost marshall had custody over the offender for trial.

Briefly, the first twelve years of the colony was marked by suspension of Constitutional right. This abridgement was due to the character of the settlers and difficulty which the parent state had in founding distant colonies. By the year 1619 when Yearldy was governor the government took the firmer foundation, and the inhabitants began to enjoy rights of other Englishmen. In 1619 the Constitution began to take a definite form, for it was during this time that the three departments of government began to become separated. There also began to appear judicial tribunals the assembly, the quarter courts, and the monthly court. #

The Assembly occupied the position as supreme court until about 1682 when it was deprived of its appellate jurisdiction. The next tribunal in order was the Quarter Court or General Court which was composed of Governor and his council. Its jurisdiction extended

over civil and criminal cases. It was the most important criminal court in Virginia, and it was the only regular tribunal that could try freeman charged with offenses punishable by life or member of body. During the earlier part of the 18th century a regular court of oyer and terminer was established and until the Revolution its jurisdiction was simultaneous with General Court to try criminal offenses. These were the only superior courts in the Colony.' The inferior courts in the Colony were county courts and the 17th century was only one in Virginia. The first monthly court was organized in 1624; and when the colony was divided into shires a separate tribunal was appointed for each; 1643 County Court was substituted for Monthly Court." In 1662 the Circuit Courts were established to try appeals from County Courts; but owing to the expensive procedure attached to them, they were soon abolished. In 1692 another special court was founded for trial of slaves and capital crimes. Courts of Hustings was also established in 1722, one at Williamsburg and Norfolk, 1736. Courts of Warbia were also held once a year to try cases arising in military affairs. These were the inferior courts. Appeals were allowed from inferior courts to General Court from it to assembly; also appeals were allowed to England.# In addition to these tribunals there was the Court of Vice-admiralty established in 1698, the Court of Commissary of the Bishop of London.

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'Chitwood's "Justine in Colonial Virginia."

" " " " " "  
#"Institution of Virginia" p 18

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### Colonial Period

With the meeting of our first General Assembly in 1619, which was the *hour* in which the Colony was practically a free and self-governing body, we find the first trace of the Court of Virginia. The different courts by which administration of justice was carried on were six in number; namely: Magistrate's Court, the Parish court, the monthly or County Court, the General Assembly, and Court of Admiralty.'

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In 1642 the General Assembly passed an act authorizing every justice of the peace to try every case involving any amount not exceeding twenty shillings, or two hundred pounds of tobacco. There were two motives in the enactment of this law; one was to avoid expense which was involved in attending the monthly court, due to the fact that such courts were not closely located, and thus the litigants would have to lose much valuable time in attending the proceedings and secondly, it tended to discourage insignificant litigation, for the expense incurred for trying a case involving twenty shillings was just as great as one involving more. It was further enacted in 1657-8 that jurisdiction of this court should be extended to suits involving an amount not exceeding 1,000 pounds of tobacco, provided that the bench was occupied by two magistrates, but in case only one was present then jurisdiction was limited to cases involving an amount not exceeding 350 pounds of tobacco. In every case an appeal lay to the county court.'

We find that the jurisdiction of the Magistrate's court was not confined to civil controversies only, but included criminal acts. As early as 1656 a justice of the peace possessed the power of arresting and binding over any notorious law breaker." Cases in which the master ill-treated his servant, the said servant could lay his complaint before the nearest magistrate court, who, if it was sufficiently grounded, would require the offender to give bond not to repeat the wrong. In case the maltreatment was exceedingly wrong, it was always in the discretion of the officer to refer the case before Judges of County Court, and he was empowered to do this in every criminal case which was presented before him for his entertainment.

There seems to have been only one Parish Court in Virginia during the 17th century. In 1656, by special act of the General Assembly, Bristol parish was empowered to erect a tribunal to possess the same jurisdiction as a county court, but to be composed exclusively of such justices as should reside within the parish which at the time included an area situated in both Henrico and Charles City counties. To the monthly court of each county an appeal should lay. There has been no definite opinion as to the reason for such a court.

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It was a court of record for it is evidenced by the ordinary land conveyances which were kept on record in its clerks possession. We find, however, that this court was discontinued by or before the end of the 17th century, and all its records passed into the hands of the clerks of Henrico County.

During the 17th century the most important administrative tribunal for local justice was the monthly or County Court. This court was instituted under the provisions of the ordinance of 1618 which was put into operation by Governor Yearlady the following governor. It was one of the most admirable features of the company's schemes for establishing local government, and its particular object was declared to be "to do justice in redressing of small and petty matters." " All cases of extraordinary importance whether civil or criminal were still left to the decision of the General Court, composed of the Governor and Council sitting in their capacity as judges which proved to be foundation of the Colony itself. To give an idea of the efficiency and importance of the County Court one can quote Brown's "First Republic" in which he states that the county or monthly court remained in force in Virginia until abolished by the Constitution in 1902, an existence of two hundred and eighty-three years. In the beginning Monthly Courts were held in precincts, for the State had not invoked the territorial division of counties. From what we can gather, the term "precinct" indicated a cluster of plantations; this brings it within the realm of the expression used by Captain John Smith, who informs us that Monthly Courts were ordered to be held in convenient places." The Act passed by Assembly in 1623-4 provided for holding of Monthly Courts in all remote parts of the colony."

Monthly Courts were at the next session ordered to be held for Corporations of Elizabeth City and Charles City. By act in February 1631-2 it was provided that like tribunals should be set up in the "upper parts within precincts of Charles City and Henrico." As territorial expansion swelled in any direction the General Assembly would immediately provide for the erecting of Monthly Courts in the newly acquired territory.

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'Randolph's History Vol III p 268 Henrico County Record.  
• "Bruce's "International History of Virginia 17th Century  
#Bryce's History of Virginia p 485 p 484



In the year 1634 we find that the Colony adopted the English system of local division; that is the shire. With the inception of this plan the Monthly Court now assumed the title of "Court Shire", for it was no longer held for precincts, but for an area which had been definitely defined by the Assembly. The membership of the Court was determined by the Governor of the Colony by and with the consent of his Council. He had power also to elect the place in each for the erection of its Monthly Court.

According to the Act of 1661-2 the justice was to be chosen from among the "most able, honest and judicial" citizens of their respective counties. '

As early as 1634 it was provided that the members of the Council should attend the terms of the Monthly Court. It was during this year that the entire settled part of the Colony was divided into eight great shires and to each of these eight "Courts of Shires" a single Consulor could be assigned who was competent to serve on its bench because he was judge of the General Court. "

As the counties increased in number it became impracticable to assign a different Councillor to each County Court which led to the passage of an act in 1661-2 which provided that two councillors should be commissioned yearly to sit in August in all Monthly Courts held within the boundaries of an area of the County which had been previously determined, but no Councillor was to perform a judge's function in that part of the Colony where he resided. This act further provided for a series of circuits to each of which a couple of itinerant Councillors were to be appointed. The effect of this law was evidenced by the fact that in August 1662 Col. Edward Hill and Col. Swann, whose homes were situated in James River Circuit, sat with the justices at the term of York Monthly Court held in Circuit of York River.

It is also of interest to note the oath which was required by the judges of the County Courts. Previous to Rev. 1688 they were required merely to swear allegiance and supremacy and also swear to the justice of the peace. After that event an additional oath was presented which ordered the judges to subscribe to one formulated by Act of Parliament. Under the prevailing rule, the Governor issued a "debimers" to designated members of a New Court

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'Bruce p 488

"Henning's Statutes p 224

#Bryce - International History Vol III 17th Century p199

authorizing them to administer the oath to the remainder, and these in turn to administer it to the justices.'

To constitute a valid court, that is a sufficient membership to render a decision, the commission of the justices of County Court always nominated at least four of them to constitute a quorum. The person's named appearing at the head of the list usually acted as presiding justice of the Court, and in his absence, the second official and so on. Should a Councillor be present he was always given the seat of honor in deference to the fact that he was a member of the highest court of the Colony and in the minutes of the session his name was always entered first. In view of the fact that the office of the justice was looked upon as being honorary, the English precedent was followed, and consequently no salary was attached to such office. The only remuneration which was paid judges was thirty pounds of tobacco which was provided for by Act of Assembly 1661-2 that every litigant should pay said amount to judge if he should fail to win his suit. " Whenever any judge exacted special payments he had to give special account for such exactions, and if not founded upon equitable basis such exactions were relinquished by him.

The power to remove was based upon disobedience to the General Court. This applied to the Governor as well. We find an operation of the rule under Jeffrey who was Governor of Virginia in 1678. Due to some of the petitions against Col. Swann by the judges appointed by Berkley, they were removed because of such by Jeffreys.

From the implication of the term "Monthly Court" or County Court, one would think that it assembled every thirty days, but it is interesting to note that it convened only six times a year which makes it every two months. In 1642 an Act of General Assembly provided that unless extraordinary occasion should arise requiring greater frequency, it should meet only every two months. # To determine whether or not an extra term was needed the majority of the justices of each court were to decide. ##

Where did the different County Courts meet? In 1642 the Governor was empowered to appoint in each county a place for meeting of its court. The usual procedure was that the Governor would select some private residence for the courts to convene. As time went on the business transacted became more colossal and places for records

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' Surry County Records p 92

" Henning's Statutes Vol II p 66

# Henrico Statutes

## Bruce's Institutional History of Va

had to be supplied for which private residences were inadequate. In 1660, due to laxities of the private residence system, a committee was appointed to decide where a court house should be built. And by 1663 we find the Court House completed.'

The next question to be filed is what was the jurisdiction of the County Court? We find in the year 1619 when the County Court was first established its object was declared to be to do justice in "redressing all small and petty matters". " Its business was to deal with legal business both civil and criminal which the General Court could not attend to conveniently owing to the rapid increase and spread in population. No one tribunal could handle all legal cases which were developing. To meet the rapid propagation of legal cases, an Act of General Assembly was passed in 1623-4 providing that monthly courts should settle all controversies involving an amount or a subject not exceeding on hundred pounds of tobacco in value, and also punish all criminal offenses. #

One of the most important sides of County Courts' jurisdiction was the power it possessed over orphan's estates, and almost innumerable proofs exist that this power was exercised with due diligence and scrupulous care. In 1642, General Assembly passed an act which stipulated that all guardians and overseers were required to make a report at least once a year to the County Court on the present condition of the property. For this purpose there was created a special term of justice known as Orphan's Court. Another term was created along with the Orphan's Court which was called the Court of Claims. Every person who thought that he had a valid claim against the court was required to present it in this court.

The County Court also sat as Court of Probate. The General Assembly provided for such a court by act which was passed in 1645, -- that titles of administration should be granted by this court## and that it should pass upon all appraisements, inventories and accounts.

In settling disputes in the County Court, two methods were usually resorted to. One was by submitting

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' Bruce p 525  
" Bruce p 540  
# Henning's Statutes  
## Bruce p 546

the point at issue to verdict of jury; the other to the judgment of the Court. ' The right of trial by jury was of the fundamental rights which were granted to colonists by English about 1621. The ordinance which bore this permission required the Courts of the Colonies to conform both to the English laws and manner of procedure. " It may be of interest to cite the first trial of this nature which was that of Dr John Pott, who in 1630 was convicted of cattle stealing, a judgment which was not very creditable due to the fact that it was unjust. # The expenses for such juries were taken care of by making the litigant who requested this mode of trial pay for its use.

In view of the fact that there was no legal institutions existing during these early times, it might be pertinent to ask how justices arrived at a basis of rendering a just decision. It is true that they did not rely upon their sense of natural equity to guide them. An act passed by General Assembly in 1666 provided that every County Court should possess copies, not only of English statutes, but also of such approved legal works as Dalton's "Justice of the Peace" and "Office of Sheriff; Swinborne's "Book of Wills and Testaments" and the like. Three volumes were only to be obtained in England and were to be paid for by county levies. ##

In 1643 we find that the position of attorney came into prominence. We first find the one to take this rank was George Rubland who was appointed in 1643 to prosecute a large number of citizens of Gloucester, Middlesex, Warwick, Elizabeth City, Isle of Wight, upper and lower Norfolk, because they had committed serious offenses against the acts of the General Assembly. ###

One of the most distinguished lawyers residing in Virginia in the 17th century was William Sherwood, who, before his return to England was accused of being guilty of malfeasance. ####

Up to the present nothing has been mentioned pertaining to Clerks of Court and sheriffs. But one can assume with reasonable amount of security that clerks existed just as early as the county courts did, for it seems indispensable that there should be some one to

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' Bruce p 550  
" Henning's Statutes p 111 Vol I  
# Abstracts of Proceedings of Va and London Vol I p 139  
## Acts of 1666 Colonial Entry Book  
### Lower Norfolk Records, Orders July 17, 1643  
#### Bruce 596

make entries of all matters pertaining to controversies which had been decided and all judgment agreed upon by the justices.

In 1643 Governor Berkley nominated Edwin Conway to this position in the County of Accomac, and based his authority upon the instructions which he had received from the English Governor, along with his commission to name every justice in the Colony. '

The position of sheriff was first provided for by Act of 1660-1, that a sheriff should be provided to sit on the bench of every county court. " Further legislation was passed in 1642-3 that a sheriff's term should continue for 12 months, but by the end of a couple of decades the period either had been extended or re-election was so customary that the prescription of one year had come to have no importance. #

In addition to the clerk and sheriff of the County Court, there was also a constable, a coroner, and a grand jury. It has been stated that the constable was chosen by the justice of the precinct of each county. We find in 1645, Lower Norfolk was divided into four local divisions and a special officer of this kind was named from each. ##

The office of the coroner was filled by citizens who were perhaps very prominent. The Governor had power of appointing the coroner from members of the County Court.

The duty of the coroner was not confined solely to holding inquests over dead bodies, but the officer performed an administrative function. For instance in 1690 William Randolph, having returned to the County Court on account of all property belonging to John Johnson, who had suddenly died, was ordered to sell the whole of it at public outcry. ###

Perhaps the Grand jury bore a more important relation to County Courts than Clerk, Sheriff, Constable and Coroner combined. This body began to function as soon as the administration of laws began in Virginia. In 1645 an Act was passed providing that a meeting twice a year should be held at such meetings they were empowered to receive presentments and information, and to enquire into every case of misdemeanor and felony excepting those

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' Bruce p 571-2  
"Henning's Statutes  
# Bruce p 616  
## " p 602  
### " p 599

the punishment of which involved life or limb. And in the event they should find a true bill they proceeded to bring the case before the County Court for final investigation. '

In cases where punishment involved loss of life or limb, such jurisdiction was possessed by the General Court. It had exclusive jurisdiction over all cases which were committed within the area that the County Court had under its supervision.

It is remarkable to note in this connection that the penalties imposed for crimes were very lenient in Virginia as compared with England. This leniency may be accounted for by the fact that the country was in its infancy and the peoples needed every kind of stimulus to make their life more fitting.

The chief capital punishment of civil administration of justice was the gallows. There also existed a military execution, but even in these instances the use of the rope was most popular equipment. "

Another form of punishment was the use of the lash. It was as a rule applied to those persons who were unable to pay off their charge by a remittance of a sum into tobacco. This procedure was favored due to the fact that it was simple and inexpensive. Only the sheriff and constable could claim a fee for carrying out the instructions of the court. # The officers who administered the whipping were constables or his assistants, but in case the cluprit was a servant, it was often done by his master. ##

One of the most ordinary forms of punishment in Virginia was confinement to the stocks. As early as 1637 an order was entered in the county court of Accomac requiring a certain person to erect stocks and upon his failure to do so he was forced to pay a sum of tobacco, and required to build stocks, and if not done he was to be confined to the then existing stocks as long as the county court should designate.

Still another method of punishment was in vogue around the year 1626 which was known as ducking. On one occasion the General Court issued a decree whereby

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' Henning's Statutes Vol I p 304 - Bruce p 605  
" " " " " " " " " " " "  
# Bruce p 616 Norumberland Record  
## Rappahannock County Record - from Bruce

one person was to be dragged at the stern of a boat in the James River for a certain distance. The most moderate form of punishment was that of simply requiring the culprit to kneel before the judges of the county court and ask for forgiveness of the persons whom he had wronged. '

Up to this point no mention has been made as to the erection of jails. But in 1642-3 as soon as counties had been divided, and decided upon, and their county seats chosen, their justices were empowered to make proper arrangements for the erection of such edifices. In order to make the occupation more imperative, the General Assembly passed an act which made the county liable if a criminal should escape due to lack of facilities to incarcerate him. The sheriffs were required to make financial reports of all disbursements made for maintenance of all jails and such expense was to be provided for by public levy. "

As means of giving a chronological survey of the prisons that existed around 1643, one could conveniently begin with York County which had its jail established in 1646; James City County 1662; Henrico County 1683; Lower Norfolk 1662; Middlesex County 1678; Rappahannock County 1685; Richmond County 1692; Northampton County 1645; Accomac County 1666. # These dates do not represent the exact date upon which the counties were successful in establishing such buildings, for some times a prison was begun and not finished until quite a late date; but the designated date serves to show the time when counties perhaps began such erections.

The discussion which is to follow will be confined to the General Court. From the very outset we have seen that this judicial tribunal was the highest as well as the oldest that existed in the Colony. Today this tribunal is represented by the Court of Appeals of the State. ##

This history of the General Court has been divided into two periods; first, its history previous to 1619 when the country was under arbitrary rule, and was in an unsettled condition; which extended its influence to action of court; second, its history after 1619 when colony had become self-governing community; and its affairs were regulated by its own acts of the General Assembly and the laws of England. ###

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' Bruce p 630  
"Henning's Statutes  
# Bruce p 633-44  
## " p 647

During the first period the jurisdiction was original, during the second term it was appellate.

When Virginia's first government was established it was so constructed that the president and council had control of both judicial and political powers. All crimes such as rebellion, conspiracy, mutiny, etc., committed by persons, the president and council were ordered to put them to death. The first trial that occurred before the president and council as a General Court was that of John Smith who had been arrested in the course of his voyage to Virginia and kept a close prisoner until the expedition arrived. From the charter of 1609, the president and council was vested with the judicial power of prosecuting offences both criminal and civil as the mother country had so directed. "

The place of meetings of the General Court was held once a year in each of the four great existing corporations. From the beginning Jamestown was of course the most convenient place for its meetings, but it also met at other places in the colony. #

In the year 1643-7 the General Court occupied its own special officers in the State House, but in 1656 due to the fact that this building was burned, the members were forced to use a private residence. ## A new State house was finally erected in 1666 and the General Court continued to hold its terms there until the insurrection of 1676. ### And again this body was forced to use private residence. Finally the General Court was removed from Jamestown to the Capital, Williamsburg in 1699, and remained there.

The General court was sometimes called by another name, the Quarter Court, because it met at least four times a year. This number of meetings were made imperative by law passed in 1621. #### But this did not act as an absolute limit upon the number of times this court should meet, for in 1642 Governor Berkley gave instructions that additional sessions should be held if business demanded it. #####

The composition of the General Court from its foundation seems to have remained the same. The Governor and his council always remained as a constituent part.

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' Bruce p 648 ##### Abstr Proceedings in Va  
" Charter 1609 from Bruce p 126 -- Bruce  
# Robinson's Transcript -- Bruce  
## Acts of 1656 from Bruce  
### Minutes of Council Feb 18 1690 - Bruce  
##### Colonial Entry 1606-62  
p 22 -- Bruce



By virtue of office of the Governor he was president of the court, and in event he was unable to attend in his capacity the secretary of State acted for him. The number which constituted a quorum at one time was three, another five, the latter number continued to be necessary during the greater part of the century. '

Mention has already been made of the jurisdiction of the General Court. It had original as well as appellate jurisdiction in all civil cases involving a larger figure than the figure limiting the right of appeal from the County Court which varied. The most important feature of the original jurisdiction was that the General Court had exclusive right to try all criminal cases in which the punishment was prescribed to be a loss of life or limb, a right which was invoked but once. "

The principal crimes over which the General Court had original recognition were murder, arson, treason, mutiny, piracy and rape. Whenever a murder was committed and was reported to the coroner and he made an investigation, in the event a body was discovered, he summoned a jury to hold an inquest, and if the jury rendered a verdict acquitting the accused, the matter was dropped, but in case the accused was indicted he was forced to give bond and to appear in the next County Court, which after proper procedure either set him free or remanded him to the General Court at its next sitting. It was held that if the coroner should decide the accused guilty then he was imprisoned. # When the grand jury brought in a true bill against him the sheriff was to give notice to the Secretary of State at Jamestown and he in turn selected from among the citizens six persons who would act as a jury along with six others when the case came up for final trial.

The witnesses were summoned from the neighborhood where the murder was committed. This involved a heavy expense for each were entitled to twenty pounds of tobacco for each day he spent in traveling to and from Jamestown and fifty pounds for every twenty-four hours he was required to remain in court. ##

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' Henning's Statutes p 533 from Bruce  
" Bruce p 665  
# Bruce p 667 Vol I  
## Henning's Statutes p 64 from Bruce

When a person was accused of murder, the first action was usually entertained in Court Court instead of being brought directly to the General Court at Jamestown. But as we shall see later on the decree rendered by this County Court was not absolute for an appeal could be had to the General Court upon proper application.

The crime of piracy was one of the most serious offenses to which the General Court had original jurisdiction but frequently the persons of whom this crime was charged were sent in Arms to England to be tried before the English admiralty court. Whenever crime of piracy was committed within waters of Virginia the crime was prosecuted in the colony.

Another important function of the General Court, as we shall see, is the appellate jurisdiction plus its function of interpreting the legal meaning of the Acts of the General Assembly. In addition to interpreting laws, it also performed certain administrative functions in regard to wills. But numerous cases show that wills were submitted to the Governor for proper interpretation.

One form of appeal to the General Court was an order to compel a bench of justices to reconsider their decree. "However, there was a more ordinary appeal which consisted of a petition to the General Court to pass upon judgment which had already been passed upon by justices. Generally the prerequisite to such an appeal was that the sum and object in dispute was equal to 1600 pounds of tobacco, at least, or its equivalent at that time, ten pounds sterling, but in cases where courts were remote and great expense was incurred the limit was considerable higher than that mentioned above. #

By Acts of 1661-2 restrictions were removed on the right of appeal when a small amount was involved, upon the theory that there "might be as great error in judgment of matters of small value as of the greatest." But in such cases the appellant was required to give security that he would prosecute the appeal; and further that if the case went to the General

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\* Lower Norfolk County Record -- from Bruce

" Bruce Vol I p 682

# Bruce Vol I p 693

Court, he would pay in form of damages fifty percent to appellee. '

The principal officers of the General Court were clerk and Attorney General. The clerk of this court was very much like that of the county court, but the attorney general was advisor of the Governor and his Council, as well as highest prosecutor of the crown."

By an Act of 1642-3 the General Assembly also was in the nature of a court; the act provided that an appeal should lie from the General Court to the General Assembly, providing further that the appellant would give security that he would press the suit -- a matter which was important, for in the event he should fail to get judgment, triple damages were imposed. # There were certain cases when the General Assembly had original jurisdiction, for instance if sufficient proof was offered to show that the county court tried to give erroneous decision.

The course which was followed in appealing a case from the General Court to the General Assembly was first fixed by definite regulations /- "it was first considered by the house committee on private causes, whose deliberations were assisted by small committees of the councillors in their capacity as members of the Upper House; but as they had already sat in the case as judges of the General Court, it was not likely that their influence was strongly exerted to reserve the decision reached in that court. This joint committee, having heard all the arguments, and arrived at a common conclusion, reported it to the House of Burgesses, which body then reheard the case and was finally determined by the General Assembly."

There was not much restriction upon a person appealing to the General Assembly, any act involving general rights was permissible. Likewise, criminal cases could be appealed to the General Assembly, but the body usually enquired into cases before they were called in this court.

The English made an interruption in the the appeals to the General Assembly and they were

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' Bruce Vol I p 68

" Henning's Statutes Vol I p 65 from Bruce

# " " " " p 272 " " p 690 Vol I

practically taken away by this government. This usurpation of the colony's power was finally relinquished by the English Government due to the land protests made by the Assembly.

During the 17th century we have seen how local cases were handled, but up to this time nothing has been said of offenses committed on the high seas involving admiralty jurisdiction. At this time there were not admiralty courts separate and distinct from other judicial tribunals. In order to afford a remedy for such cases, the county court and General Court acted in this capacity. The General Court decided all cases of admiralty causes which involved a loss of life or limb. It appeared that maritime cases were taken care of by county courts. An act of Assembly was passed about 1656 giving county courts this jurisdiction. The sheriff was by same act empowered to serve warranty on shipboard, but such document had to be signed either by the Governor or Councillor, or by two members of the County Court, one of whom had to belong to quorum. In the year 1697-8 a court of admiralty was established in the colony as a permanent part of the judicial system. It was officially designated as a court of Vice-admiralty. The authority for granting such a court was received from the High Court of Admiralty of England. "

The jurisdiction of the Admiralty Court embraced cases of piracy, privateering, violation of Navigation Act, unlawful conduct on the collector's part in performing his duties, or unlawful conduct in making tax reports. All cases arising between master and mariner were decided by this court.

The only other court established during the 17th century in Virginia was the court of chancery, erected by Howard in accord with English institutions. The tribunal only existed during his administration and, therefore, played very small part in the judicial history of Virginia. #

At different times a court of exchequer was proposed. The duties of such a tribunal were embraced in jurisdiction of the General Court. But no such tribunal was erected in Virginia during the 17th century for it was contended that there were already established sufficient courts to handle all matters of revenues.

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\*Henning's Statutes Vol I p 467 - Bruce 698

"W & M C Quarterly Vol 5 p 129

#Bruce Vol I p 705

1700

Present Time

With the beginning of the 18th century, very little can be said at the outset as to the development of the courts of Virginia. It was not until 1705 that an additional judicial tribunal was added to the list that had developed during the 17th century.

By an act passed in 1705 by the General Assembly a Court of Claims was to be established in every county. It was further provided that the justices of each county should meet at the court house before every session of the General Assembly for purpose of proving all debts that were to be paid by the public which had been provided for by special acts of the General Assembly. '

The time in which this court was to meet was left with the sheriff of each county and it was made imperative that they should appoint a convenient day for the court to convene. In case there was an absence of the sheriff or county clerk they were to be fined one thousand pounds of tobacco, and in case there was not a sufficient number of justices present to carry on the business those who were away were to be fined five hundred pounds of tobacco."

In order for a person holding a claim to present it to court, he had to show some certificate or warrant stipulating that the claim was well grounded. In addition to this he had to show a specific account of the items to which he was claiming reparation and give an oath that his claims were of "bona fide" character and that no satisfaction had been rendered for them. #

After the claims had been properly certified, it was the duty of the clerk of the county court to transmit them to the General Assembly in order that they could be cared for by appropriation. As a compensation to the clerk for his duty, he was to receive twenty pounds of tobacco for all claims that were approved by the General Assembly and amounted to at least a hundred pounds of tobacco.

For the purpose of examining prisoners who had been summoned by justices of the county, there was

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' Henning's Statutes Vol III p 261  
" " " " " p 262  
# " " " " " p 262

established a Court of Examination. This court was composed of the justice of the county who was usually summoned by a precept from justice of the peace. In the court of Examination the question for settlement was whether the criminal should be held under jurisdiction of the county court or under the General Court. When this question was decided the sheriff was obligated to accompany the prisoner to the designated court for final trial. When any prisoner was remanded to the proper tribunal and the offense was not a very serious one, he was admitted to bail, but was not permitted to be removed from the jurisdiction of the designated court under twenty days. But in the event some person had been removed from the county, this did not "ipso facto" avoid such person from then giving bail. "

It was also provided by the General Assembly that when a prisoner was brought before the Court of Examination, he could have his witness to appeal in his behalf in any tribunal which he was to be tried in. And the sheriff upon the prisoner's request was to issue subpoenas to the specified witnesses.

It may be of interest to note how the sheriff's compensation was computed. By the act creating the court "supra". It likewise provided that when the sheriff carried a prisoner to a specified court, he was to receive a rate of one hundred pounds of tobacco for every twenty miles of distance he carried the prisoner, and of the county to be dealt with accordingly. The clerks of this court were appointed by the captains and field officers. The salary of the clerks are provided for from the penalties and fines that are imposed, which is also left to discretion of the captains and field officers.

Parallel to the function of the justices of the county court there were justices of the Court of Hustings. The first trace of this court was found in 1742 which was provided by act of the General Assembly during that year. The act stated "that the court of Hustings within any city shall henceforth have power of granting licenses to ordinary keepers within any city and that courts of other counties cannot infringe upon rights of others.

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' Henning's Statutes Vol III p 390  
" " " " " " 391

"That such licenses be granted in the manner directed by one act of Assembly made in the fourth year of the reign of her late majesty, Queen Ann. And the justices of the said court of Hustings shall have the same powers and authorities, both as to granting licenses and regulating and suppressing ordinances, as the justices of any county court within the colony have or may exercise by virtue of the same, or any other act of the assembly. '

- The court of Oyer and Terminer has been mentioned previously, but nothing has been said as to its jurisdiction. We find that the purpose of this court was to punish slaves, who had committed some crime. The act provided that in case any negro was found guilty of murder, he shall not be given any medicine for the purpose of bringing about any ease whatsoever and if any slave is found producing any ointment he will be adjudged guilty of felony and must suffer death. The trial of all such cases was in the Court of Oyer and Terminer. " A provision was made also for compensation to the owner of any slave who might be condemned to die. It frequently happened that the master would go on witness for his slave and in case the slave was convicted, a price was set by the court for the value of the slave, this was brought before the next session of the General Assembly and an appropriation was made to reimburse the master. No slaves or negroes were allowed to bring witnesses into court to swear in the defense of another negro or slave.

Notice has already been made to the fact that the Court of Chancery was temporarily established in the colony during the latter part of the 17th century but played no active part during that time. In 1775 an act was passed by the General Assembly re-establishing the Court of Chancery. # The judges of the court were to consist of three who were to be chosen by joint ballot of two houses of the Assembly. The Act also prescribed an oath and made it a penalty if any person should take the office without taking proper oath.

The jurisdiction was limited to appellate

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' Henning's Statutes Vol V p 207  
" " " " VI p 105  
# " " " IX p 389

in some cases. The only case in which it had original jurisdiction was when the matter involved at least ten pounds, except if it be against the justice of any county or other inferior court, or the vestry of any parish, on pain of having the same with cost. It was further provided that this court should have two sessions each year. The High Court of Chancery was always considered open to issue writs of injunction, writs of "ne exeat" or other processes which had been allowed by law that were issued in time of vacation by the clerk of the General Court in Chancery. The power of appointing clerks was also left with the court, and he should remain in office according to his behavior, his salary was to be determined by legislation.

In conjunction with the High Court of Chancery there appeared also the Court of Appeals. Our first trace of this judicial tribunal was found in May 1779 at which time an act had been passed by the Assembly creating this body. It likewise had its terms twice a year, namely on the 29th except when that day should fall on Sunday, and in that event it was to meet on the 30th of the month, and August of each year, and remain in session six consecutive days each time at the Capital in Williamsburg, or such other places as might be designated by the General Assembly. '

The judges of this court of appeals were those who acted as judges of the High Court of Chancery, General Court, and Court of Admiralty, the first mentioned was to take precedence and so on down the list. " The jurisdiction of this court consisted of those cases originating there, those which were brought before it on writ of error to reverse decrees of the High Court of Chancery, those from General Court, and those from the Court of Admiralty. The staff of this court was provided for in same manner as the High Court of Chancery, except that in the Court of Appeals there was in addition to a clerk, a tipstaff, and a crier; the first removable for misbehavior, and the two others at pleasure; the sheriff of the county in which they sat was their officer.

The procedure of prosecuting on appeal was

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' Henning's Statutes Vol X p 89  
" " " " " p 90



prosecuted in the same manner as other court had entertained cases, likewise the same damages were imposed if the decree, judgment of sentence was affirmed. ' And too, the clerk issued like process for summoning the litigants, removing records, suspending execution, which was prescribed by the case. Records used bonds were kept on record by the clerk, and docketed then in order in which he received them.

With the adoption of the Const. of the United States, there were certain courts of Virginia that have already been described, were eliminated. The first of these was the Court of Admiralty. By the terms of the Const of the United States cases arising under admiralty and maritime jurisdiction shall be dealt with by Congress. " This act took effect in the year 1789.

Previous to the abolishing of the High Court of Admiralty in 1789, there had been provision made by the Assembly for establishment of the District Court. Heretofore, as we have seen the General Court, had been performing a function which was somewhat like that of a District Court, but, due to the fact that there were times when justices could not be properly meted out, Expense of criminal prosecution was exorbitant, so an enactment was passed for the purpose of dividing the state into districts, putting at the head of each a court which was called the District Court. The first district was composed of the counties of Henrico, Hanover, Chesterfield, Grochland, and Powhatan. # The second district was composed of James City, Charles City, New Kent, Surry, Gloucester, York, Warwick and Elizabeth City. The time it was to be held was on the first day of April and the first day of September of each year.

The judges of the said court were to be elected by joint ballot of both houses of the Assembly, in addition to present nine judges of the General Court. It was also made imperative that two judges of each General Court should attend each session of the District Court; who, together with the three elected by Assembly, constituted the personnel of the Court. ##

Jurisdiction of the District Court extended

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'	Henning's Statute	Vol	10	p	91
"	"	"	12	p	769
#	"	"	"	p	533
##	"	"	"	p	734

over all persons and all causes and matters at common law which were recognized in the General Court and which involved an amount of thirty pounds or more, or three thousand pounds of tobacco whether brought before the court by original process or by writs, or by appeal. Jurisdiction was further extended over wills and letters of administration, orphan, guardians, public debtors, whether sheriffs or others, recording of deeds of land, and other property within the district. In addition to the above mentioned cases it also was invested with right to try all cases of admiralty which the constitution of the United States did not cover. '

Power to try issues and to inquire of damages by jury was given the court, and to determine all questions concerning the legality of evidence, and other matters of law, which might arise. "

When questions arose that were new and difficult and no adequate remedy could be given, the court could adjourn any matter of law to General Court, or any party thinking that he had been aggrieved by the decision of the district court, might at the discretion of the court obtain a writ of error to the court by appeal.

As time went on new courts were established and some of the older ones were abolished and some reformed. The cause of such action is simple. Advancements were being made socially and other wise which of necessity demanded improvement in the judicial system. In view of this situation we find that in 1787 a reform in the county court which had not existed heretofore. In the county Quarterly courts were to be held on March, May August, and November for the trial of all presentments and criminal prosecutions, suits at common law and in Chancery, where sums exceeded five or eight hundred pounds of tobacco, and should be continued for term of six days unless business was settled sooner. # In the event there was not sufficient number of justices to hold the court on the first day it was to be adjourned from day to day, but not exceeding six days which was the term it was to sit. The monthly and quarterly courts had concurrent jurisdiction in granting and dissolving

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' Henning's Statute Vol 12 p 736  
" " " " " p 7  
# " " " " " p 468

injunctions in Chancery, and in entering up judgments on attachments against absconding debtors where the property attached should not be replevied, and except such as are by law finally recognized before a single justice of the peace, in all petitions for debt, detinue and trover, and in all matters that touched the breach of peace and good behavior, in motions on replevin bonds, and motions against sheriffs and other public officers and defaulters. " County courts could sit at intervals not designated to Quarterly Courts and could handle all cases which were not covered by said Quarterly Court. "

In 1792, parallel to the county court was the corporation court. The justices of at least four corporations were necessary to constitute the said court to be held where they should deem necessary. The jurisdiction of this court extended over all cases arising within the said jurisdiction and all other matters which by statute was given to it for handling. There were certain cases not within the said courts jurisdiction, and they were cases where the prosecution consisted of loss of life or limb, cases involving outlawry against person or persons, and cases involving amounts less than five dollars or two hundred pounds of tobacco. #

#### 1800 - 1927

The previous period shows the development of courts from 1700 to 1800 and this period begins with 1800. From 1800 until the adoption of the second constitution of Virginia in 1830, there was no change in judicial development. With the adoption of the new constitution we find that the judicial power was vested in the supreme court of appeals and in such superior courts as the legislature may have deemed necessary, also the judges in the above courts and in the County Court were under the control of the legislature. The judges of the Supreme Court of Appeals and the superior courts were to hold offices during good behavior or until removal was prescribed by the

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' Henning's Statutes Vol 12 p 468

" Henning's Statutes Vol 12 p 468

# Revised Code of Virginia 1803 p 93

constitution, it was further provided that they should not hold any other office, appointment, or public trust, and in event they should accept any of them their judicial office would be terminated. The terms of office of the Supreme Court of Appeals, Superior Courts, General Court, and Superior Court of Chancery, were to last until the end of the first legislature under the constitution of 1830.

During the period which preceded this one, there was established a Martial Court, in each company. During this period a similar court was created as the Regimental Court of inquiry in every regiment. It was composed of the commandant of the regiment and commandants of the battalion and companies in the regiment or attached the same. A majority of the said officers were to constitute a quorum and the senior officer was to preside over the meeting. ' The time at which the court should hold its meeting was annually in November and December, and at such place as the commandant of the regiment might appoint. This Court's Officer should consist of a clerk and provost marshal, who shall be removed at pleasure by the court. The president of the court had to administer to the clerk an oath to faithfully perform his duties. As a matter of fact, all the members of the court were subject to oath and were given to each in some manner. It was the duty of the clerk to keep records of the proceedings, and of the returns made by the several commandants of the companies for regular routine of duty. "

The duties of this court was to assess fines upon officers of the regiment, and upon other officers attached thereto or other persons where specially authorized. It may adjourn from time to time until the business before it was completed. In the event a quorum was not present at any meeting, those present could adjourn until a quorum could be formed, or commandant of the regiment may appoint another day of meeting, giving reasonable notice thereof. It had the further duty of trying appealed cases from battalion court, and it might lessen or remit any fine imposed by the said court, or any fine imposed by the preceding regimental court and suspended by the commandant of the regiment. #

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' Code of Virginia 1849 - p 163

" " " " " - " "

# " " " " - " 164

In addition to the Regimental Court of enquiry, there was also in each regiment two battalion courts of enquiry, each composed of commandant of the battalion and of the companies in the battalion or attached to the same. The officers and procedure was conducted in the same manner as that of the Regimental Court of inquiry; the duties were also similar, they assessed fines upon non-commissioned officers, musicians, and soldiers in the battalion. Every person fined had the right to appeal it, as has already been seen. '

Along with the above mentioned court was the courts martial. This court as I have already said was created during the 18th century, but I mention it now due to the fact that it has slightly changed. By the constitution as adopted in 1830, the governor for misconduct within his own knowledge, or upon complaint lodged in writing by any commissioned officer supported by affidavit, shall have power, if the officer be cognizable by military tribunal, to arrest any major-general, brigadier-general, or the adjutant general. " The major general or brigadier-general could also arrest any field officer, or officer of similar rank, and also any field officer in like manner could arrest any captain or subaltern or officer of similar rank. But there was a time limit as to the time of arrest; it was provided that an officer should not be arrested for an act done two years before the apprehension for the arrest. When an officer made an arrest, he would have to submit to the governor proof of the charges. If the governor should approve the grounds for the arrest, he would order a court martial, but if he should not approve it, the case would be dismissed and if no court martial was ordered within sixty days after the arrest, the arrested officer was restored to his command. #

The members of the court were to consist of not less than five nor more than nine. If the court was called for the purpose of trying a major-general, a brigadier-general, or the adjutant-general, and not more than four brigadier-generals, and as many field officers as would make up the required number. If the trial was for field officers or of similar rank, it was to be composed of one brigadier-general and as

many field officers and captains as would make up the required number; and four captains or subalterns, one or more field officers and as many captains or subalterns as are necessary. Before trial the court was to give notice at least ten days in advance to the arrested the time and place the court would be held and also furnish a list of officers to be there. '

### Conclusion

In conclusion I should like to give a resume of the courts that still in existence in Virginia which have already been described to some length in detail. It will also be my purpose not only to epitomize the courts and their organizations, but in addition point out, whenever occasion presents, a criticism of our judicial organization of this State.

In Virginia, as in all other states, there is one appellate court of last resort, and several courts for the trial of original causes. At the bottom of the judicial organization is the local justices of peace who are given jurisdiction over prosecutions for petty misdemeanors, and civil cases not involving sums over fifty to a hundred dollars, which do not affect title to land. The next step above the local justices is the county courts, which are sometimes styled courts of Common pleas, or District Courts, having jurisdiction over cases involving amounts greater than those which the justices of the peace have cognizance. The county courts not only have original jurisdiction over civil and criminal cases, but they also have appellate jurisdiction over decisions ordered by justices of the peace.

The next higher court is the Superior Court or Circuit Court which has unlimited jurisdiction over values in controversy and crimes; the county court in such cases has only limited jurisdiction in this conjunction.

Another judicial division is found in cities, municipalities, towns and boroughs, known as municipal courts. The municipal courts have jurisdiction over

civil cases to which one residing in the city is the party, or growing out of a transaction accruing within the city, irrespective of the amount in demand. This court also has criminal jurisdiction, before which convictions may be had for petty misdemeanors, and those charged with higher offenses bound over for trial in some court of general jurisdiction. '

A further division is found for the settlement of estates of deceased persons and the appointments and superintendence of guardians and similar agents of the law, and proceedings in insolvency. In such instances special courts are provided known as Courts of Probate, Surrogate's Court, and Courts of insolvency.

In some states county courts are only in name, except for some limited purpose. Their real functions are administrative. The commissioners are those who hold the courts and their functions are to manage the affairs of the county. " In Oregon a statute was passed in 1903 which indicated that the county courts were not fountains of law, for it required the district attorneys in each county or their deputies to advise county courts on all legal question that may arise. In Virginia the county courts for a long time were held by all the justices of the peace in the county or such of them as may attend. It was found that these magistrates nominated their successors to the Governor, who almost never refused to commission the person so nominated. The courts also nominated the officers of the militia below rank of general, and managed all county affairs, besides having an extensive civil and criminal jurisdiction, including the power of acquittal in case of felony. This may appear rather awkward nevertheless it prevailed, and it gave very good satisfaction for a long time according to Mr Tucker in his "Life of Thomas Jefferson. Even in states where county courts have jurisdiction of ordinary lawsuits, the judges or a majority of them, are sometimes without any legal training; they are not chosen strictly according to merit but rather for some personal relationship.

By the Constitution of Virginia, as I have

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' Baldwin's American Judiciary p 126  
" " " " p 127

already shown, requires that there shall be a Supreme Court of last resort, and in addition usually specifies one or more inferior courts. Such courts stand on a firmer footing than those created by legislative enactment under general power to establish inferior courts. By virtue of the fact that there is a power to establish courts also implies power to destroy. But in case a tribunal is created by constitution, with functions defined by it, is beyond legislative enactment and control.

We find in the year 1802 the Republicans in Congress were exercising their rights when they repealed the act passed by the Federalist the year to create a system of Circuit Courts. ' Again in the year 1811 Massachusetts was within her rights when she abolished the court of Common Pleas and supplemented with Circuit Courts with fifteen judges. "

At this point I shall point out a weak point in our judicial organization. As we have seen, the justices of the peace are vested with jurisdiction of small civil causes. In each town there are several of these, having jurisdiction over a whole county. Some of them may be lawyers, but none need be, and as a matter of fact few are. Consequently any of them are permitted to try cases. Another point of criticism is the fact that their salary is based upon the fee system. This alone is sufficient to vitiate all principles of justice for naturally justices are like other men and eager to magnify their salaries. Thus the justice who is most likely to favor the lawyer who brings his case to him is not usually going to receive a larger volume of business.

Justice of the peace can be trusted to dispose of petty criminal prosecution and to conduct certain examinations to find out if there is sufficient guilt to warrant a trial before a jury, but even in this case there is a possibility that injustice may be done due to the ignorance of law on the part of such justices.

In 1903 a justice of the peace abdicated his office in one of our cities and made his reason public. It was that no one could afford to hold it who was not willing to stoop to unworthiness. It was further

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' Baldwin's American Judiciary p 128

" " " "



stated, as I have already pointed out, that lawyers who had large practices threw their business where they could procure the most favorable results. ' The most frequent practice was by means of making discount on legal fees. There was competition in the field of justices and the lowest bidder got the case. It was even commercialized to extent that blank writs were signed by justices and sold at so much a dozen, to be filled in to suit attorneys. A practice of this sort is surely corruptible, and endurable only because the defeated has regrets about making an appeal to a higher court. This no doubt is an expensive proceeding. This situation could be ameliorated if judgments were just in the first instance, and it should be the aim of the government to try to aid and succor as far as possible this idea.

In order to bring about a reform it would be necessary to have fewer justices, and change their methods of compensation to a salary which would be fixed. This remedial reform would give better men an opportunity to give promoted action. Why this is not done is due to the fact that the sentiment has been to settle small controversies by neighboring courts and it is further contended that common sense is only essential, and no trained lawyer. Another objection to change in compensation is said to be to great a burden on the taxpayer. It has further been argued that custom and tradition has fostered it, and has worked well with honest men, and people have an inherited attachment for it.

Another deficiency is the fact that there is a dual system of procedure, one in law, and one in equity. This is intrinsically bad. It has been maintained for the simple reason that lawyers and the community are used to it, and it also furnishes a convenient means of testing any claim of right to a jury trial. Our state constitution has a provision for such rights, but no mention is made to define cases in which the fight exists. The courts have authority to determine whether a case is to be determined by equitable means as distinguished from legal relief.

Another feature about the American courts is

that they are nearly all known as "courts of record." This form of tribunal tries causes between parties and is required to keep accurate records of all proceedings and depositions. In order to carry on this work fully the courts are provided with a clerk. His records are the only evidence of judgments, and they can't be disputed or contradicted in any collateral proceeding. If an error is in it, it can be corrected only by direct proceedings.

The justices of the peace in trying their petty cases do not ordinarily constitute a court of record, nor is a court which is furnished a clerk. Usually there is a statute which makes the practice of recording proceedings a court of record.

The inherent power of the court of record is to preserve all proceedings, and appoint proper officers to carry on this clerical work unless otherwise provided. By statute the sheriff is encumbered with the duty to attend to all such courts. His function is to execute all processes as are directed to him. Witnesses and jurors are summoned by him; arrests and attachments are made by and execution to enforce final judgment.

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

Williamsburg, Virginia

TO THE DEGREE COMMITTEE:

This is to certify that I have examined the attached  
thesis entitled HISTORY OF THE COURTS OF VIRGINIA FROM 1607 TO  
THE PRESENT TIME

Submitted by

Mr. Thomas W. Gayle

as partial requirement for the Master of Arts degree at the College  
of William and Mary.

I        approve        this thesis with the following comments  
         disapprove  
(no comments)

Signed \_\_\_\_\_  
Professor

Date \_\_\_\_\_